

STATE OF MICHIGAN
COURT OF APPEALS

HILLSIDE PRODUCTIONS, INC.,

Plaintiff-Appellant,

v

O'REILLY, RANCILIO, NITZ, ANDREWS,
TURNBULL & SCOTT, P.C. and CHARLES
TURNBULL,

Defendants-Appellees.

UNPUBLISHED

May 18, 2006

No. 258908

Macomb Circuit Court

LC No. 2002-002495-NM

Before: Neff, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff brought this lawsuit alleging claims of legal malpractice, breach of fiduciary duty, constructive fraud, and negligent misrepresentation, arising from defendants' legal representation of plaintiff in 2000 and 2001. The trial court granted defendants' motion for summary disposition, concluding that plaintiff failed to show a genuine issue of material fact with respect to the elements of proximate cause and damages.

As this Court explained in *O'Donnell v Garasic*, 259 Mich App 569, 572-573; 676 NW2d 213 (2003):

A trial court's grant or denial of summary disposition under MCR 2.116(C)(10) is reviewed de novo on appeal. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. Affidavits, pleadings, depositions, admissions, and documentary evidence are considered in reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), and the evidence is viewed in the light most favorable to the party opposing the motion. Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. [Citations omitted.]

To prevail on its various tort claims, plaintiff was required to establish the element of proximate cause. *Veltman v Detroit Edison Co*, 261 Mich App 685, 694; 683 NW2d 707 (2004); *Alar v Mercy Mem Hosp*, 208 Mich App 518, 530; 529 NW2d 318 (1995). Proximate cause consists of two separate elements: (1) cause in fact, and (2) legal cause. *Id* at 530. To establish cause in fact, a plaintiff must present substantial evidence from which a jury may conclude that, more likely than not, the plaintiff's injuries would not have occurred but for the defendant's conduct. *Weymers v Khera*, 454 Mich 639, 647-648; 563 NW2d 647 (1997). "To establish legal cause, the plaintiff must show that it was foreseeable that the defendant's conduct 'may create a risk of harm to the victim, and . . . [that] the result of that conduct and intervening causes were foreseeable.'" *Id.* at 648 (citations omitted). When a number of factors contribute to an injury, one actor's negligence will be considered a proximate cause of the harm if it was a substantial factor in producing the injury. *Allen v Owens-Corning Fiberglas Corp*, 225 Mich App 397, 402; 571 NW2d 530 (1997).

In this case, plaintiff relies on an affidavit submitted by attorney Charles Borgsdorf and a Supplemental Loss Report to factually support its claim that its damages were caused by defendants. We agree with the trial court that these documents are too conclusory and fail to create a genuine issue of material fact with regard to causation. Neither document factually explains how defendants' alleged conduct caused the various damages claimed by plaintiff. To avoid summary disposition, the nonmoving party may not rely on mere allegations or denials in pleadings, but must set forth specific facts showing that a genuine issue of material fact exists. *Aho v Dep't of Corrections*, 263 Mich App 281, 288; 688 NW2d 104 (2004). Conclusory statements are insufficient to create a genuine issue of fact. *Rose v Nat'l Auction Group*, 466 Mich 453, 470; 646 NW2d 453 (2002).

Borgsdorf's affidavit contains mere conclusory allegations and is devoid of detail. The Supplemental Loss Report purports to set forth plaintiff's economic losses, but does not explain how defendants' conduct caused the alleged losses. Likewise, none of the other evidence submitted by plaintiff sufficiently explains how plaintiff's alleged losses can be linked to defendants' allegedly improper conduct. We therefore conclude that the trial court properly granted defendants' motion for summary disposition.

In light of our decision, it is unnecessary to consider the question of damages.

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Talbot
/s/ Brian K. Zahra